

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRENT ALAN OWINGS,

Petitioner,

Civil Action No. 21-cv-11355

v.

HONORABLE MARK A. GOLDSMITH
UNITED STATES DISTRICT JUDGE

ADAM DOUGLAS,

Respondent,

_____ /

OPINION AND ORDER (1) GRANTING MOTION TO REOPEN THE CASE TO THE COURT'S ACTIVE DOCKET (Dkt. 7), (2) AMENDING THE CAPTION, (3) GRANTING THE MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS (Dkt. 8), (4) ORDERING THAT THE ORIGINAL AND AMENDED PETITIONS (Dkts. 1, 8) BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND (5) DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5 MATERIALS

Brent Alan Owings (Petitioner), confined at the Saginaw Correctional Facility in Freeland, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Dkt. 1). Petitioner challenges his convictions for first-degree home invasion, Mich. Comp. L. § 750.110a(2), and assault with intent to do great bodily harm less than murder, Mich. Comp. L. § 750.84. The case was held in abeyance so that Petitioner could exhaust his claims in the state courts. Owings v. Miniard, No. 21-cv-11355, 2021 WL 3422382 (E.D. Mich. July 23, 2021).

Petitioner has filed a motion to reopen the case and an amended petition for writ of habeas corpus, which is construed as a motion to amend the petition. The motion to reopen the case is granted. The Clerk of the Court is ordered to reopen the case to the Court's active docket. The Court will also amend the caption to reflect the name of Petitioner's current warden. The Clerk of the Court shall serve a copy of the original and amended petitions for writ of habeas corpus upon

respondent and the Michigan Attorney General's Office by first class mail. Respondent shall file an answer and the Rule 5 materials within 180 days of the Court's order. Petitioner has 45 days from the receipt of the answer to file a reply brief.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner, following the exhaustion of state court remedies. See, e.g., Rodriguez v. Jones, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Petitioner has exhausted his claims with the state courts. The case is reopened.

The Court will also order that the caption in this case be amended to reflect that the proper respondent in this case is now Adam Douglas, the warden of the Saginaw Correctional Facility, where Petitioner is now incarcerated. The only proper respondent in a habeas case is the habeas petitioner's custodian, which in the case of an incarcerated habeas petitioner would be the warden. See Edwards v. Johns, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); See also Rule 2(a), Rules Governing § 2254 Cases, 28 foll. U.S.C. § 2254.

The Court permits Petitioner to amend his habeas petition because it advances claims that may have arguable merit. See, e.g., Braden v. United States, 817 F.3d 926, 930 (6th Cir. 2016).

The Clerk of the Court shall serve a copy of the original and amended petitions for writ of habeas corpus (Dkts. 1, 8) and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases. See Coffee v. Harry, No. 04-cv-71209, 2005 WL 1861943, at * 2 (E.D. Mich. Aug. 2, 2005). The Respondent shall file an answer within 180 days of the Court's order. See Erwin v. Elo, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent is also ordered to provide this Court with the Rule 5 materials at the time that it files its answer. See Griffin v. Rogers, 308 F. 3d 647, 653 (6th Cir. 2002); Rule 5, Rules Governing § 2254 Cases, 28 U.S.C. foll.

§ 2254. Petitioner shall have 45 days from the receipt of the answer to file a reply brief, if he so chooses. See Rule 5(e), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

SO ORDERED.

Dated: June 28, 2024
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge